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HUMAN RIGHTS COMMITTEE

Forty-first session

SUMMARY RECORD OF THE FIRST PART (CLOSED)**
OF THE 1063rd MEETING

Held at Headquarters, New York,
on Friday, 12 April 1991, at 10.00 a.m.

Chairman: Mr. POCAR

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Consideration of communications under the Optional Protocol to the Covenant (continued)

Organizational and other matters

* All persons handling this document are requested to respect and observe its confidential nature.

** The summary record of the second part (public) of the meeting appears as document CCPR/C/SR.1063/Add.1.

N.B. This record is subject to correction. Participants wishing to submit corrections during the session of the Committee are asked to hand them, in typewritten form, to the Secretary of the Committee. A consolidated corrigendum of the summary records covering the closed meetings of the Committe will be issued shortly after the session.

The meeting was called to order at 10.35 a.m.

CONSIDERATION OF COMMUNICATIONS UNDER THE OPTIONAL PROTOCOL TO THE COVENANT (continued)

Communication No. 427/1990 (CCPR/C/WG/SPR/41/DR/427/1990)

1. Mrs. HIGGINS, speaking as Special Rapporteur for New Communications, said that she had been instructed to make recommendations directly to the Committee in cases where a communication seemed clearly inadmissible by virtue of article 2 or article 3 of the Optional Protocol. That seemed to be the case with the communication under consideration, in which an Austrian citizen claimed to be a victim of violations under articles 7, 17, 23 and 26 of the International Covenant on Civil and Political Rights (para. 1). The author, a university professor, claimed that the mayor of a town in the District of Lower Austria had no legal grounds for refusing to grant him a building permit (paras. 2.1 and 2.5). He alleged that the refusal constituted "harassment", had caused "psychological terror" and had been detrimental to his family's well-being (para. 3.3). His claims of attacks on his honour and degrading treatment (para. 4.3) appeared to be insufficiently substantiated for purposes of admissibility. He might have had a valid claim concerning the court expenses he had incurred, but that was not mentioned in the communication. She therefore recommended to the Committee that it should find the communication inadmissible under article 2 of the Optional Protocol. However, if Committee members wished to consider it further, it could be taken up at the July 1991 meeting of the Working Group on Communications.

2. Mr. SADI agreed with Mrs. Higgins and suggested that the section of the recommendations headed "complaint" should precede the section headed "Background" in line with the format decided on by the Committee.

3. Mr. EL-SHAFEI noted that paragraph 4.3 indeed dealt with the substance of the allegation.

4. Mr. PRADO VALLEJO noted that the communication was dated 20 September 1990 and was not urgent. Surely, consideration of such a recent communication could be deferred to the meeting of the Working Group.

5. Mr. WENNERGREN referred to article 17 (1) of the Covenant concerning protection against interference with privacy and family and attacks on reputation, and said that, in his country, it was not unusual for provincial authorities to resort to such means in an attempt to humiliate residents of the capital. In that light, he proposed that the Committee should consider whether article 17 of the Covenant had been violated.

6. Mrs. HIGGINS said that if Mr. Wennergren and a number of other Committee members had reservations, the communication should be taken up at the Working Group meeting rather than declared inadmissible. Responding to Mr. El-Shafei,

(Mrs. Higgins)

she said that the substance of the allegations was referred to in the recommendation solely for purposes of determining admissibility.

7. The CHAIRMAN said that, if he heard no objection, he would take it that the Committee wished to defer a decision on admissibility and refer the recommendation to the meeting of the Working Group on Communications in July 1991.

8. It was so decided.

ORGANIZATIONAL AND OTHER MATTERS

Mandate of the Special Rapporteur for New Communications (CCPR/C/SPR/41/MISC.5)

9. Mrs. HIGGINS, speaking as Special Rapporteur for New Communciations, said that a paper recapitulating the decisions taken by the Committee on the powers of the Special Rapporteur had been prepared for the benefit of her successor and had been circulated to members. She drew attention, in particular, to the outstanding issues set forth in the final paragraph of the paper (CCPR/C/SPR/41/MISC.5), namely: (a) whether the Special Rapporteur could recommend inadmissibility based exclusively on non-substantiation (article 2 of the Optional Protocol), which had been illustrated by the communication just considered; (b) whether the Special Rapporteur could recommend inadmissibility in clear-cut cases of non-exhaustion of domestic remedies (article 5 (2) (6) of the Optional Protocol; (c) whether the Special Rapporteur could recommend inadmissibility if the case had been submitted to another instance of international investigation on settlement, (such as the Inter-American Commission on Human Rights) (article 5 (2) (a) of the Optional Protocol); and (d) whether the Special Rapporteur could issue a request under rule 86 in cases which did not involve capital punishment, or deny interim protection under rule 86 in such cases.

10. A decision on issue (d) had to be taken urgently as the author of a communication had petitioned the Special Rapporteur to issue a request under rule 86 of the rules of procedure in a case which did not involve capital punishment. It was not clear whether the Special Rapportuer was competent to do that. Thus far, she had handled the situation by communicating with the State party, but she might require further instructions from the Committee and more important, guidelines were needed for the longer term. At issue was whether an author's rights would be irrevocably harmed unless a State suspended certain practices until his case could be heard.

11. Mr. PRADO VALLEJO said that the Special Rapporteur should be authorized to grant protection under rule 86 of the Committee's rules of procedure but should not be able to deny such protection without consulting the Committee.

12. Mr. MAVROMMATIS recalled that rule 86, which had given rise to considerable discussion before its adoption, was customarily invoked in two cases: capital punishment or endangerment of a prisoner's health where a

(Mr. Mavrommatis)

doctor's opinion was required. There was no reason why the Special Rapporteur should not be autorized to grant or deny protection under rule 86 as long as it was invoked sparingly and in the prpoer circumstances. Replying to Mr. Prado Vallejo, he stressed that the Special Rapporteur's denial simply meant that the issue would be taken up by the Committee as a whole at a later stage.

13. Mrs. HIGGINS reiterated that it was a sensitive matter for an individual, to instruct a Government, in the name of the Committee, to refrain from adopting legislation. In that light, she proposed that the Special Rapportuer should be empowered to issue requests or denials under rule 86, but should also be required, in so doing, to consult the Chairman of the Committee and report all decisions to Committee members.

14. Mr. SADI expressed concern that rule 86 might be ultra vires. It would be prudent to qualify the very broad category of "cases which did not involve capital punishment", perhaps in consultation with the Chairman and the other officers of the Committee.

15. Mr. EL-SHAFEI said that issues (b) and (c) were clearly within the Special Rapporteur's mandate. Referring to issue (a), he said that input from other Committee members might be useful to the Special Rapporteur in recommending inadmissibility based exclusively on non-substantiation. He would appreciate additional examples of cases which did not involve capital punishment where rule 86 was applicable. Thus far, the only example had been given by Mr. Mavrommatis.

16. Ms. CHANET, referring to issue (a), said that the term "bien-fondé" in the French version implied powers which exceeded the mandate of the Special Rapporteur. The Special Rapporteur should not be required to decide on the admissibility of a communication based on the substantiation of allegations, considering that the Committee itself reached agreement only after lengthy discussion. In issue (c), the French word "manifestement" did not fully convey the very important concept of "clear-cut" non-exhaustion of remedies. As the Committee was not always aware of all the remedies available in a State party, any decision by the Special Rapporteur in that regard should be based on absolute certainty.

17. Mrs. HIGGINS said that there was absolutely no question of the Special Rapporteur taking decisions with respect to issues (a), (b) and (c) - only of making recommendations to the Committee. The sole question relating to those issues was whether the Special Rapporteur should consult the Working Group first, or, in the interest of time, submit recommendations directly to the Committee.

18. The Special Rapporteur should be authorized to take decisions under rule 86 because, in such situations, urgent action was often required. It was clear that the rule was applied only where a person's safety or rights were

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jeopardized and there did not seem to be any danger of its applications becoming open-ended. The case she had referred to earlier concerned a tract of land used by an indigenous population for animal husbandry which was to be deforested under new legislation adopted by the State party. In that particular instance, she had requested the Government to refrain temporarily from implementing the legislation.

19. Mr. LALLAH said that the Committee had acted under rule 86 in other cases not involving capital punishment, for example, to request medical examinations in cases involving allegations of torture; he was not sure, however, that the rule could be extended so far as to cover requests for delaying the adoption of legislation. The Special Rapporteur's power to issue a request under rule 86 was one which must be exercised with great care and in consultation with the Chairman.

Discontinuation of consideration of cases

20. The CHAIRMAN said it was proposed that the Committee should discontinue consideration of four of the cases before it, and asked the Secretariat to comment on them.

21. Mr. de ZAYAS (Centre for Human Rights) said that in the first of the cases, No. 311/1988, the author had withdrawn his case as he had obtained legal assistance for the purpose of petitioning the Judicial Committee of the Privy Council for special leave to appeal. It was therefore recommended that the Committee should discontinue consideration of the case.

22. It was so decided.

23. Mr. de ZAYAS (Centre for Human Rights) said that in the second case, No. 371/1988, the Secretariat had learned from Amnesty International that the author had been granted a presidential pardon in August 1990 and subsequently released from prison. The Secretariat had addressed two letters to the author, but had received no reply.

24. Mr. SADI suggested that, as no reply had as yet been received, it might be better for the Committee to defer a decision on the matter.

25. Mr. WENNERGREN suggested that Amnesty International might be able to help the Committee establish contact with the author.

26. The CHAIRMAN suggested that the case should be kept on the list and another effort made to contact the author.

27. It was so decided.

28. Mr. de ZAYAS (Centre for Human Rights) said that in the third case, No. 416/1990, the author's counsel, by letter of 17 December 1990, had withdrawn the case from the Committee's consideration. It was therefore recommended that the Committee should discontinue consideration.

29. It was so decided.

30. Mr. de ZAYAS (Centre for Human Rights) said that, in the fourth case, No. 388/1989, it had been learned that the author had died in a prison fire in 1990, and on 14 March 1991 counsel had requested the Committee to discontinue consideration of the case.

31. It was so decided.

32. Mr. EL-SHAFEI, referring to communications concerning Jamaica, asked what progress there was to report in connection with the follow-up to the contact with the Government.

33. The CHAIRMAN said that no reply had so far been received to the Committee's letter, but the Committee had been informed verbally, that the Solicitor-General might wish to be in contact with the Committee at its July session in Geneva. He suggested that the Committee, after receiving the written reply, should write again and request assurances that no executions would be in the meantime carried out in the pending cases.

34. Mrs. HIGGINS supported that suggestion and added that the Committee should also authorize the Chairman to pursue the matter if no reply was received.

35. It was so decided.

The closed meeting rose at 11.25 a.m.

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HUMAN RIGHTS COMMITTEE

Forty-first session

SUMMARY RECORD OF THE SECOND PART (PUBLIC)* OF THE 1063rd MEETING

Held at Headquarters, New York,
on Friday, 12 April 1991, at 11.40 a.m.

Chairman: Mr. POCAR

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* The summary record of the first part (closed) of the meeting appears as document CCPR/C/SR.1063.

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Chief, Official Records Editing Section, Department of Conference Services, room DC2-750, 2 United Nations Plaza.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

The public meeting was called to order at 11.40 a.m.

SUBMISSION OF REPORTS BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

1. The CHAIRMAN said that he had received a letter from the Permanent Representative of Panama containing some of the additional information requested by the Committee in connection with the consideration of that country's second periodic report. That information would be made available to the members of the Committee in due course.

2. With regard to the reports to be dealt with at the next session, the Bureau suggested that the Committee should consider the third periodic report of Iraq, the second periodic reports of Jordan and Madagascar and the initial report of Sudan, and continue its consideration of the second periodic report of Morocco. The Bureau also suggested that the third periodic reports of the Byelorussian Soviet Socialist Republic and Mongolia should be kept in reserve for possible consideration. Lastly, the Bureau suggested that the Secretariat should be instructed to write to the Governments of Austria, Ecuador and Poland informing them that their periodic reports would be considered at the Committee's autumn session. If he heard no objection he would take it that the Committee wished to adopt those suggestions.

3. It was so decided.

FUTURE MEETINGS OF THE COMMITTEE

4. The CHAIRMAN drew attention to the tentative calendar of meetings for 1992-1993 prepared by the Secretariat. If he heard no objection, he would take it that the Committee wished to adopt the proposed calendar. It was proposed that the forty-fourth session of the Committee should be held in New York from 23 March to 10 April 1992, the forty-fifth session in Geneva from 13 to 31 July 1992, the forty-sixth session in Geneva from 19 October to 6 November 1992, the forty-seventh session in New York from 22 March to 9 April 1993, the forty-eighth session in Geneva from 12 to 30 July 1993, and the forty-ninth session in Geneva from 18 October to 5 November 1993.

5. It was so decided.

ORGANIZATION OF WORK AND OTHER MATTERS

Progress report of the Special Rapporteur on Follow-Up

6. Mr. FODOR, speaking as Special Rapporteur on Follow-Up, said that in his progress report, he dealt with the particulars of cases considered in 1991 in which the Committee had found that violations of the Covenant had been committed. He would continue to add to the report in order to keep it up to date.

(Mr. Fodor)

7. The Secretary-General had sent notes verbales to the States parties concerned in the cases informing them of the new procedure adopted by the Committee and the appointment of a Special Rapporteur on Follow-Up, and requesting follow-up information on the cases. He had been informed that information would be provided in the near future on the cases involving Uruguay. As the three-month time-limit would expire in early June, he hoped that the information would reach the Committee before the beginning of its next session.

8. Noting that no notes verbales had been sent in those cases where the States parties had provided some information, he asked for guidance on how to proceed in those cases where some information had been provided but it was insufficient.

9. Mr. LALLAH stressed the need for further information in cases involving partial remedies. The Special Rapporteur should continue his work until States parties transmitted appropriate replies indicating the extent to which they complied with the Committee's decisions.

10. Mr. EL-SHAFEI said that the Committee should authorize Mr. Fodor to continue his work in order to obtain more detailed replies from States parties and request further information in cases where replies had not been received before expiry of the time-limit in question.

11. The CHAIRMAN said that the Special Rapporteur on Follow-Up should continue his work and request additional information when necessary.

12. Mrs. HIGGINS inquired whether Mr. Fodor's report should be considered confidential in nature.

13. Mr. DIMITRIJEVIC said that Mr. Fodor should press States parties to fulfil their obligations under the Covenant. His progress report should not be viewed as confidential because it was a follow-up to decisions taken by the Committee concerning the obligations of States parties. The rule of confidentiality did not apply to such matters, which should be given as much publicity as possible to induce States parties to comply with decisions by the Committee.

14. Mr. MAVROMMATIS said that since the Committee was currently engaged in following up a number of cases, it should give further consideration to whether the progress report by Mr. Fodor should be issued as a Committee document.

15. The CHAIRMAN pointed out that the progress report would be included in the Committee's annual report.

16. He announced that consultations had been held among the members of the Committee on the appointment of a Special Rapporteur for New Communications

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for the coming year. In the light of the consultations, he took it that the Committee wished to appoint Mr. Lallah to that office.

17. It was so decided.

18. The CHAIRMAN invited the Committee to take decisions on the future membership of its working groups. For the Working Group on Communications, Mr. Myullerson, Mr. Prado Vallejo, Mr. Sadi, Mr. El-Shafei and Mr. Pocar had been proposed as members. For the Working Group on Article 40 of the Covenant, Mr. Dimitrijević, Mr. Wennergren, Mr. Ando and Mr. Aguilar had been proposed as members.

19. If he heard no objection, he would take it that the Committee decided to approve those appointments for one year.

20. It was so decided.

21. Mr. LALLAH pointed out that Mr. Waco and Mr. Ndiaye, who were absent, might wish to serve as alternates.

22. The CHAIRMAN suggested that the Working Group on Article 40 of the Covenant should consider the list of issues to be sent to the missions of Iraq, Jordan and Madagascar before the next session and review the draft general comments on articles 7 and 10. The Working Group should also address the question of the Committee's methods of work. That matter should be given careful consideration in both the Working Group and in plenary meetings of the Committee at the next session. Lastly, the Working Group should prepare a document on the forthcoming World Conference on Human Rights to serve as a basis for discussion in plenary. If he heard no objection, he would take it that the Committee wished to adopt those suggestions.

23. It was so decided.

24. Mr. DIMITRIJEVIĆ said that it was very difficult, if not impossible, for people to attend the public meetings of the Committee in New York because the security guards thought that such meetings were closed to the public. Accordingly, the Committee, through the Chairman, should bring that matter to the attention of the Secretary-General in order to correct the situation.

25. The CHAIRMAN said that that was an important point and that he would do his best to remedy the situation.

CLOSURE OF THE SESSION

26. After an exchange of courtesies, the CHAIRMAN declared the forty-first session closed.

The meeting rose at 12.20 p.m.